

REMARKS

Claims 1-26 were subject to the restriction requirement according to the following grouping set forth by the Examiner:

- I. Claims 1 and 2 drawn to substantially pure Bcl-XL binding polypeptides, classified in class 530, subclasses 300 and 350.
- II. Claims 3-8, drawn to the isolated nucleic acids encoding the polypeptides of Invention I, vectors and host cells thereof, classified in class 536, subclasses 23.5 and class 435, subclasses 252.3, 320.1 and 325.
- III. Claims 20-26 drawn to methods of source labeling a nucleic acid-fusion molecule, the source labeled nucleic acids and fusion proteins obtained thereby, and a method for identifying the source of the nucleic acid portion of said fusion molecule, class 435, subclass 91.5, class 536, subclass 23.1, class 530, subclass 402 and class 435, subclass 6.
- IV. Claims 9-19 drawn to method for identifying a Bcl-XL binding polypeptide comprising contacting source labeled polypeptide with a Bcl-XL polypeptide and a method for identifying a compound that modulates the binding between a Bcl-XL polypeptide and a Bcl-XL-binding polypeptide, classified in class 435, subclass 7.1.

Applicants note that according to MPEP §803, two criteria must be met for a proper restriction requirement: a. the inventions must be independent or distinct as claimed; and b. there must be a serious burden on the Examiner to search and examine all claims if restriction were not required.

Applicants respectfully submit that in this case, the Examiner has not shown that there would be a serious burden in examining the Groups set forth in the restriction requirement. In particular, Applicants note that it appears that the search for Groups II and IV would be co-extensive. Both groups are classified in Class 435; it appears that a search covering the subject

matter of Group IV would cover the subject matter of Group II also. Thus, Applicants respectfully submit that the inventions of Groups I, II, and IV can be efficiently searched and examined together without placing a significant additional burden on the Examiner.

To the extent that the Examiner requires Applicants to elect a nucleotide or amino acid sequence, Applicants submit that the various sequences subject to election requirement are encompassed by a Markush group; Applicants have amended the claims to recite the proper Markush language. Pursuant to MPEP 803.02, “[i]f the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all claims on the merits, even though they are directed to independent and distinct inventions.” In addition, Applicants respectfully point out that the search of the Markush-type claim should be extended to non-elected species should no prior art be found that anticipates or renders obvious the elected species (MPEP 803.02). In this case, Applicants respectfully request that the search be extended to cover a reasonable number of non-elected species should no prior art be found.

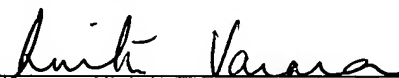
Accordingly, Applicants respectfully request reconsideration and withdrawal of the restriction and election requirement.

The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000. Should an extension of time be required, Applicants hereby petition for same and request that the extension fee and any other fee required for timely consideration of this submission be charged to **Deposit Account No. 18-1945**.

Date: February 9, 2004

Customer No: 28120
Docketing Specialist
Ropes & Gray
One International Place
Boston, MA 02110
Phone: 617-951-7000
Fax: 617-951-7050

Respectfully Submitted,



Anita Varma, Esq.
Reg. No. 43,221